

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:09CV371-03-MU

ALBERT C. BURGESS, )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA et. al., )  
 )  
 )  
Respondents. )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court on initial review of Petitioner's Petition filed on September 28, 2009 pursuant to 28 U.S.C. § 2241 (Document No. 1. )

Petitioner is a federal prisoner and contends that while being housed in McDowell County, he has been denied (1) access to the Courts; (2) adequate exercise; (3) the appropriate diet; and (4) proper medical care.

Petitions under § 2241 are used to attack the execution of a sentence and not prison conditions. McIntosh v. United States Parole Commission, 115 F.3d 809 (10<sup>th</sup> Cir. 1997). Although a § 2241 attack on the execution of a sentence may challenge some matters that occur in prison, such as the deprivation of good time credits or other prison disciplinary matters, this does not make a § 2241 action like a condition of confinement lawsuit, which are properly brought under civil rights law. Id. In the instant case, Petitioner is complaining about his lack of access to the courts, an appropriate diet, inadequate medical care and lack of exercise which are all related to the conditions of his confinement. Petitioner is not attacking the execution of his sentence. Therefore, Petitioner has not stated a claim under §2241 and his Petition is dismissed and denied.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Petition is Dismissed  
for failure to state a claim for relief.

**SO ORDERED.**

Signed: October 1, 2009

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

